

The 22nd February, 1979

No. 11(112)3 Lab-79/1829.—In pursuance of the provision of section 17 of the Industrial Dispute Act, 1947 (Act XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Faridabad, in respect of the dispute between the workmen and the management of M/s. Prestolite of India Limited, Mathura Road, Faridabad.

BEFORE SHRI NATHU RAM SHARMA
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL
HARYANA, FARIDABAD

Application No. 17 of 1975 under Section 33-A of the Industrial Disputes Act, 1947

between

SHRI CHANDAN SINGH PAUL WORKMAN AND THE MANAGEMENT OF
M/s. PRESTOLITE OF INDIA LIMITED,
MATHURA ROAD, FARIDABAD

AWARD

The workman moved this complaint under section 33-A against the respondent management alleging breach of section 33 of the Act, as a regular reference was pending and the management dismissed the workman during pendency of that reference without obtaining permission, and violated section 33 of the Industrial Disputes Act. Notices of the application was given to the management respondent who appeared and filed their reply. On the pleadings of the parties the following issues were framed by my learned predecessor on 19th January, 1976:—

1. Whether the application made by the workman under section 33-A of the Industrial Disputes Act is incompetent and not maintainable?

Whether the reference made to this Tribunal by the Government relating to the entitlement of the workman of bonus and dearness

allowance is bad in law on the ground that the dispute had been settled amicably between the parties, before the reference was made?

3. Whether the complainant was a workman on the date of filing of this petition?
4. Whether the management contravened the provisions of section 33 of the Industrial Disputes Act?
5. Relief.

My learned predecessor decided issue No. 1 against the management,—*vide* his order dated 12th February, 1976 and fixed the case for the evidence of the workman on issue No. 3. The workman tendered in evidence the certified copy of his statement dated 10th February, 1976 praying that that statement may be read in evidence and closed the case on the issue. The parties had agreed to treat that statement of Shri C. S. Paul as evidence in this case and the representative for the management gave a statement that he had no objection in reading the statement Ex. W-1 as evidence in the case on behalf of the workman. The evidence of the workman was closed. Then the case was fixed for the evidence of the respondent management. The management respondent examined Shri O. P. Malhotra their Personnel Officer as MW-1 and Shri B. S. Sahni, their Plant Manager as MW-2 and Shri J.D. Kalra, their Accounts Officer as MW-3 and Shri Ranbir, a purchaser of the management as MW-4 and closed their case. The onus of issue No. 3 was on the workman. The representative for the workman requested that he may be allowed evidence in rebuttal. But the onus of issue No. 3 was on the workman, hence the question of rebuttal did not arise. But in the interest of the workman as well as in the interest of justice, opportunity to explain documents Ex. M-82, M-83 and M-85 was allowed. He was also allowed to prove any other ingredient of rebuttal of these documents except admission of his initials thereon, as the workman had

admitted his initials on these documents. Then the workman again examined himself and closed his case.

There is overwhelming evidence oral, as well as documentary, produced by the parties. The workman also made an application for leading additional evidence at the stage of arguments in the main case. That was also fixed for hearing. Arguments on the application for additional evidence as well as arguments in the main case on issue No. 3 were heard at length on two dates. The parties also filed written arguments. Now I give my findings on issue No. 3.

MW-1 stated that Shri C. S. Paul was a senior Purchase Supervisor and three purchase assistants and one steno were under him. He was having overall control of purchase of material and was holding a supervisory job. He proved Ex. M-1. He further stated that he used to take Shri C. S. Paul in confidence while interviewing the junior cadre purchase assistants and while sanctioning increments of employees under him and, the workmen working under Shri C. S. Paul had to make an application for leave to him. Shri Kirpal Singh was Material Control Officer who acted on the advice of Shri C. S. Paul but if Shri Kirpal Singh found that the decision involved fraud, bungling in finance, he could disagree. Purchase Assistant used to make purchases from the market with the finance supplied to them by Shri C. S. Paul under his order and the pay of Shri C. S. Paul was raised to Rs. 550 p.m. with effect from 1st April, 1974 when he was promoted as Senior Purchase Officer. In cross examination he stated that there are three attendance registers maintained in the factory, one for officers, 2nd for Supervisors and the 3rd for staff subordinate to the officers, and Shri C. S. Paul used to sign in the register for supervisors. He also deposed that Ex. M-2 bore the signatures of Shri C. S. Paul. He also deposed that Sarvshri Harpreet and Dudi had left their job. Other persons also worked under Shri C. S. Paul. MW-1 is Personnel Officer and Factory Manager in the factory of the management. MW-2 Shri

B. S. Sahni, the Plant Manager, also corroborated the statement of MW-1 and deposed that Shri C. S. Paul attended all purchase queries and finalised the rates. He used to take quotations and rates by way of correspondence and telephonic message and other communications. He also deposed that Sarvshri Ranbir Singh, purchaser, and Harpreet Singh clerk, Shri Oberoi Steno, Tara Dutt, Purchasor and Chandan Singh, peon used to work under Shri C. S. Paul. Shri C. S. Paul was the recommending authority regarding leave and he deputed the subordinates on duty and granted short leave. Shri C. S. Paul used to attend all meetings, to take policy decisions in respect of purchases. Shri C. S. Paul draw money from the finance section for making purchases. He might have drawn about Rs. 60,000 for making purchases and used to sign all purchases orders. He was consulted by the management for granting or withholding increments of his subordinates.

MW-3 Shri G. D. Kalra, Accounts Officer also deposed that Shri C. S. Paul was Senior Purchase Assistant and was Incharge of his department. There was a Coordinating Committee which used to meet and its meetings were attended by the Plant Manager, Production and Development Manager, Shri C. S. Paul, Purchase Incharge, Kirpal Singh Material Control Officer and himself. Shri C. S. Paul was authorised to draw money from the accounts department. He had also brought accounts book with him. According to the accounts books, Shri C. S. Paul had withdrawn an amount of Rs. 62166.72 from the management for purchases. He also produced original vouchers. He proved several documents numbering more than 80. Shri C. S. Paul admitted his initials on the documents. Shri C. S. Paul also admitted his initials on purchase order. They also bore the signatures of Shri Kirpal Singh. He also corroborated that Shri Tara Dutt, Dudi, Ranbir Singh and Oberoi and the Steno were under Shri C. S. Paul. He also deposed that Shri R. B. Mathur was also employed as Purchase Officer very recently and he worked for 4-5 months only before Shri C. S. Paul was dismissed. He also

deposed that Shri C. S. Paul and no other person could receive the amount prior to sanction. The cross-examination of this witness is a very lengthy one. He further deposed that he used to give the money to Shri C. S. Paul who distributed to his assistants for making purchases. Shri C. S. Paul used to give him the statement of expenses together with the cash memo. The cross-examination of this witness was concluded on three dates. MW-4 Shri Ranbir the Purchaser also corroborated the statements of MW-1, MW-2 and MW-3 and deposed that Shri C. S. Paul was Senior Purchase Assistant and four persons including Steno were working under him. He also worked under Shri C. S. Paul and leave applications were recommended by Shri C. S. Paul and were sanctioned by higher authorities. Duty slips were also issued to them by Shri C. S. Paul, who allotted duties to them. Bargaining for purchases was settled by Shri C. S. Paul. He used to instruct them to purchase that goods from those customers. After purchases, they used to render accounts to Shri C. S. Paul. In cross-examination he stated that he was only a purchaser and was not in correspondence with the parties. Shri C. S. Paul used to sign the letters dictated by him and never saw Shri C. S. Paul ever typewriting, although he disclosed his ignorance if Shri C. S. Paul used to be a Steno-typist prior to he joined the purchase department. He further deposed that Shri P. N. Dunda and Shri Parpreet Singh also worked under Shri C. S. Paul and they have left service of the management some three years ago. Shri C. S. Paul had produced and owned a certified copy of his statement, dated 10th February, 1976 with a prayer that this statement of his should be treated as his evidence and had closed his case. Thereafter Shri C. S. Paul examined himself as his own witness who stated that he used to prepare purchase orders in his hand generally but when a typist was available he used to get them typewritten but used to check them. He admitted his initials on Exhibit M-82, M-83 and M-85.

There is overwhelming documentary evidence also. The statement of Shri

C. S. Paul Exhibit W-1 owned and admitted by him, reads that he was receiving wages Rs. 550 per mensem. He also admitted the receipt of a letter Exhibit W-1. He admitted that he was designated as Senior Purchase Assistant and his immediate officer was Shri Kirpal Singh, Material Control Officer. He prepared purchase orders as per the instructions of Shri Kirpal Singh. He used to purchase materials from the market. If the material was not liked by Shri Kirpal Singh, he used to return it to the seller. In cross-examination he stated in that statement that he had no authority to withdraw the money independently for purchases of material. He admitted in cross-examination that applications Exhibit M-1 to M-4 bore his signatures under the endorsement of "Recommendation". He also admitted his signatures on Exhibit M-5 to M-16. He also received a copy of Exhibit M-17. He admitted that he used to attend the meetings held by the management for discussions of policy matters only when he was called and not otherwise. He further admitted in his cross-examination that he used to be called by Shri Kirpal Singh for policy matters. Exhibit WX is grades and scales. The grades of non-qualified supervisory staff is Rs. 200—15—275—20—375—EB—30—675 and the grades of Senior Sales Assistants is 300—20—400—25—650. According to the pay scales Shri C. S. Paul comes above the non-qualified supervisory staff. The grades of the qualified supervisory staff is Rs. 300—25—400—30—580—40—780. Ex. WX is a document relied on by Shri C. S. Paul, the complainant. According to this the status of Shri C. S. Paul is above non-qualified supervisory staff and a little less than qualified supervisory staff. Shri C. S. Paul by this piece of evidence given by him, comes in category of supervisory staff. Ex. M-2 is a letter to Shri C. S. Paul describing him Senior Purchase Assistant that his salary is Rs. 550 p.m. This letter does not speak of "wages" but speak of "salary" which Shri C. S. Paul has accepted. Ex. M-1 is a letter to Shri C. S. Paul, Senior Purchase Assistant informing him that he will be looking after the assignments describing in it and it

shall be his responsibility from enquiry stage to procurement stage and Shri Harpreet Singh and Shri P. N. Dunda shall assist him. The assignments are as follows:—

Rubber parts, Phenolic Sheets and Powder, Turned Components, Nylon and Bakelite Parts, Rimets, Contact Points, Kraft Paper Tubes, Oils and Lubricants, Paints and Chemicals, Packing material as printed/corrugated cartons, Wooden cases, etc., Printed Stationery and Faridabad Market.

These assignments certainly do not bring Shri C. S. Paul in the category of a workman. Ex-W-3 is also a re-production of Ex. WX giving grades and scales. Ex. W-1 is a copy of Certified Standing Orders. Ex. M-86 to Ex. M-93 are signed by Shri C. S. Paul as Head of the Department. There are orders for payment. Ex. M-94 and M-95 bears the signatures of Shri C. S. Paul as well as another person, as head of the department. They are also pay orders. From the overwhelming documentary evidence it is proved that Shri C. S. Paul was doing an important and responsible job involving finance to the tune of Rs. seven-eight thousands or so P.M. Shri C. S. Paul used to pay a huge amount to the sellers for purchases. His own admissions in his cross-examination and his statement-in-chief also go to prove that he was handling an important responsible post, which cannot be held by a workman. He has also recommended leave applied for by other persons. The documents produced by the management are about 165. There are payment vouchers about 79 by which payment of huge sum to Shri C. S. Paul is proved. Shri C. S. Paul has also admitted his signatures on Ex. M-82, M-83 and M-85, which are purchases orders, with the direction that documents to be negotiated through Union Bank of India. Such a responsible work cannot be assigned to a workman. Ex. M-81 bears the signature of Shri C. S. Paul on behalf of purchase department informing a seller M/s. Bhatia Printing Press, Faridabad that his rates Rs. 375 per piece be

read instead of Rs. 4, which goes to prove that even the rates for purchase of material were settled by him. This document Ex. M-81 bears his own initials only, and not of any other person, copy whereof has been endorsed by Shri C. S. Paul to the Accounts Officer of the management with a direction to amend the purchase order and to issue a debit note to the party against bills passed at Rs. 4 per piece. This document goes to prove that Shri C. S. Paul commanded great power of discretion and fixing the rates with the sellers for purchase of their material, even he could issue instructions and directions to the Accounts Officer of the management. He could even correct the rates and order a debit note. He could order for and against passing of bills. All these duties performed by him involve high responsibility and power, which do not render him to be a workman. The management has also produced their attendance registers. The evidence overwhelmingly proves that Shri C. S. Paul was performing the duties of a supervisory nature and not of a workman.

I have heard the arguments of the parties at length. The representatives for Shri C. S. Paul argued that the management has held the enquiry against Shri C. S. Paul which goes to prove that Shri C. S. Paul was a workman. This argument of the representative for the workman was repelled by the arguments of the representative for management on the ground that the management can hold enquiry even against their officers for finding out the truth and for doing justice. The representative for the management further argued that the definition of workman as given in the Industrial Disputes Act legally proves that Shri C. S. Paul was not a workman. He further argued that a person doing skilled or unskilled manual work, supervisory work drawing less than Rs. 500 P.M., technical work and clerical work, is a workman and no others. Shri C. S. Paul was not doing any manual work, was doing supervisory work but was drawing Rs. more than 500. He was neither doing technical, nor clerical work, rather he was performing the duties of high responsibility

of a supervisory nature, using his discretion in fixing rates of materials, purchases by the management. He also cited 1970 II LLJ, page 590, 1969 II LLJ, page 670, 1961 I LLJ, page 18, 1961 II LLJ page 94.

The representative for the management also gave written arguments. From a consideration of evidence, oral as well as documentary, of the parties and from arguments and from consideration of all facts, I am convinced that Shri C. S. Paul is not a workman coming under the definition of workman as given in the Industrial Disputes Act. I, therefore, decide issue No. 3 against the complainant. As a result of my findings on issue No. 3, other issues have become redundant and I cannot proceed with this complaint, because I have found Shri C. S. Paul not to be a workman as per the Industrial Disputes

Act. I, therefore, dismiss this complaint. No order as to costs.

The 3rd February, 1979.

NATHU RAM SHARMA,

Presiding Officer,
Industrial Tribunal,
Haryana Faridabad.

No. 134, dated the 6th February, 1979.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under the Industrial Disputes Act, 1947.

The 3rd February, 1979.

NATHU RAM SHARMA,

Presiding Officer,
Industrial Tribunal,
Haryana Faridabad.

No. 11(112)3Lab-73/1830.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Vikas (India) Private Ltd, Mathura Road, Faridabad:—

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 438 of 1978

between

SHRI KANHIYA LAL, WORKMAN AND THE MANAGEMENT OF M/S VIKAS (INDIA) PRIVATE LTD., MATHURA ROAD, FARIDABAD

Present;—

Shri Jawahar Lal for the workman.

Shri V. K. Diwan for the management.

AWARD

By order No. ID/FD/1/158-78/42040, dated 18th September, 1978, the Governor of Haryana, referred the following dispute between the management of M/s Vikas (India) Private Ltd, Mathura Road, Faridabad, and its workman Shri Kanhiya Lal, to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Kanhiya Lal was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and settled their dispute. The workman has withdrawn his dispute as per settlement and has received his full and final amount from the management. I, therefore, give my award that the termination of services of Shri Kanhiya Lal was justified and in order. He is not entitled to any relief.

NATHU RAM SHARMA,
Presiding Officer.

Industrial Tribunal, Haryana, Faridabad.

Dated the 5th February, 1979.

No. 135, dated the 6th February, 1979

Forwarded (four copies) to the Secretary to Government, Haryana Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.